

Rule 3-1

STATE STATE CONTRACTS

1. AUTHORITY:

Article V, Section 33, Constitution of Colorado
Article XII, Section 13 (2), Constitution of Colorado
~~Governor's Executive Order, signed October 1, 1977~~
Governor's Executive Order, signed April 7, 1978

2-2-320(2), C.R.S. (Attorney General Contract Approval)
24-30-903(d), C.R.S. (Telecommunications Contract Approval)
24-30-1104(1)(h), C.R.S. (Central Service Contract Approval)
24-30-1107, C.R.S. (Central Services Contracts)
24-30-1303(1)(a), C.R.S. (State Buildings Contract Approval)
24-31-101, C.R.S. (Attorney General - Legal Advisor)
24-30-202, C.R.S. (State Controller Authority)
24-101-105 (Procurement Code)

2. DEFINITIONS:

2.1 State Contract - Formal legally binding agreement between two State agencies and/or institutions of higher education or one State agency or institution of higher education and another party or an amendment to such agreement. State contracts, as used in this fiscal rule, do not include purchase orders. For the purpose of this fiscal rule, State contracts include, but are not limited to:

- Expenditure contracts
- Revenue contracts
- Sponsored Projects contracts
- Interagency contracts

2.2 Expenditure contracts – Formal legally binding agreement between one State agency or institution of higher education and another party or an amendment to such agreement, which ultimately results in an expenditure of funds, either directly or indirectly, or in an obligation to the State. Expenditure contracts include non-financial and in-kind contracts where the State incurs an obligation. Examples of expenditure contracts include, but are not limited to:

- Personal service contracts
- Outsource contracts
- Settlement agreements
- Leases and licenses of real property

2.2.1 Personal service contracts - Service or goods purchased by the State where the State or a third party is to receive a benefit. Individuals or firms performing these services are considered independent contractors and are not considered employees of the State.

2.2.2 Outsource contracts - Formal legally binding agreement between a State agency or institution of higher education and another party or an amendment to such agreement whereby the State agency or institution of higher education remains fully responsible for the provision of affected services and maintains control over management decisions while another entity operates the function or performs the services. All contracts that meet the definition of outsource contracts shall be submitted to the State controller's office for review unless specifically exempted by

State statute. Any outsource contracts that divert revenues due the State are subject to State Controller's review.

2.2.3 Settlement agreements - Formal legally binding State contract between two or more parties for the purpose of ratifying decisions reached concerning employment or contractual disputes.

2.2.4 Leases and licenses of real property – A lease is a formal legally binding agreement where the landlord give the right of possession to the State as tenant for a specified period of time. A license is a personal privilege to use the property without possessing any interest therein.

2.3 Revenue contracts - Formal legally binding agreement between one State agency or institution of higher education and another party or an amendment to such agreement, which does not result in the expenditure of funds or an obligation to the State. Examples of revenue contracts include, but are not limited to:

- Granting Franchises
- Sale of Real Property

2.3.1 Granting Franchises – In franchising external services to private firms, the State agency or institution of higher education grants a concession or privilege to a private-sector entity to conduct business in a particular market or geographical area, such as concession stands, hotels, and other services provided in certain State parks. The State agency or institution of higher education may regulate the service level or price, but users of the service pay the provider directly.

2.3.2 Sale of Real Property – The State agency or institution of higher education has statutory authority and sells State property and the State has no obligation regarding the real property after the sale is completed. Real property includes land and improvements such as buildings and other structures.

2.4 Sponsored Projects – Formal legally binding agreement between an institution of higher education and another party that provides restricted funding and requires oversight responsibilities for research and development or other specified programmatic activities that are sponsored by federal or private agencies and organizations.

2.5 Interagency Contracts - Formal legally binding agreements between two State agencies and/or institutions of higher education and enforced by the State Controller. These are State contracts as defined in this fiscal rule and shall be subject to the provisions and requirements of this fiscal rule.

~~Commitment Voucher – A purchase order, a state contract, an approved travel authorization, an advice of employment, or any other document appropriate to the transaction, prescribed by the State Controller, which creates a financial obligation to the state that ultimately results in a disbursement of funds by the state.~~

~~Employee/Employer – A relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished, but also the details and means by which that result is accomplished. It is not necessary that the employer actually direct or control the manner in which the services are performed, it is sufficient that the employer has the right to do so. The right to discharge is also an important factor, indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and equipment, and a place to work to the individual who performs the services.~~

~~Independent Contractor—An independent contractor relationship exists when the firm or individual is responsible to the state for the results of certain work but is not subject to the state's control as to the means and methods of accomplishing those results. Further, an independent contractor generally:~~

- ~~A. Has a place of business and a business listing in a directory when the services are offered to the public.~~
- ~~B. Selects the clients and is free to work for one or more during any given period of time.~~
- ~~C. Determines the time and place where work shall be performed.~~
- ~~D. Provides the tools and materials needed to perform the work.~~
- ~~E. Does not participate directly or indirectly in benefit programs of the state. For example, the individual is not covered by the state for Worker's Compensation covering injury to the worker, for public liability covering injury to others, or for unemployment compensation.~~
- ~~F. May agree to perform specific services for a fixed price and generally does not receive regular amounts at stated intervals.~~

~~Interagency Contracts – Formal legally binding agreements between two principal state agencies and/or institutions of higher education are state contracts as defined in this fiscal rule and shall be subject to the provisions and requirements of this fiscal rule.~~

~~Personal Service Contracts – Service or benefit purchased by the state where the state is to receive direct benefit. Individuals or firms performing these services are considered independent contractors and are not considered employees of the state.~~

~~State Contract – A formal legally binding agreement between two state agencies and/or institutions of higher education or one state agency or institution of higher education and another party or an amendment to such agreement, which ultimately results in the disbursement of funds. For the purpose of this fiscal rule, state contracts include, but are not limited to, outsource contracts, personal service contracts, purchased service contracts, and settlement agreements. State contracts, as used in this fiscal rule, do not include purchase orders.~~

~~Outsource Contracts – A formal legally binding agreement between a state agency or institution of higher education and another party or an amendment to such agreement whereby the state agency or institution of higher education remains fully responsible for the provision of affected services and maintains control over management decisions while another entity operates the function or performs the services. Outsource contracts includes contracting out, granting of franchises to private firms, and the use of volunteers to deliver public services. All contracts that meet the definition of outsource contracts shall be submitted to the state controller's office for review unless specifically authorized by state statute. State contracts that divert revenues due the state are subject to state controller's review.~~

~~Contracting Out – Contracting out is the hiring of private sector firms or nonprofit organizations to provide a good or service for the state agency or institution of higher education. Under contracting out, the state remains the financier and has management and policy control over the type and quality of services to be provided.~~

~~Granting franchises – In franchising external services to private firms, the state agency or institution of higher education grants a concession or privilege to a private sector entity to conduct business in a particular market or geographical area, such as concession stands, hotels, and other services provided in certain state parks. The state agency or institution of higher education may regulate the service level or price, but users of the service pay the provider directly.~~

~~Purchased Service Contracts – Service or benefit purchased by the state for a third party. An example is medical services received by a third party through a state contract between a medical care provider and the Department of Health Care Policy and Financing. Individuals or firms performing these services are considered independent contractors and are not considered employees of the state.~~

~~Purchase Order—A document prepared and signed by an authorized employee of a state agency or institution of higher education for the purpose of encumbering funds and securing goods or services from a vendor. For the purpose of this fiscal rule, a purchase order is not considered a state contract.~~

~~Settlement Agreements—Formal legally binding state contracts between two or more parties for the purpose of ratifying decisions reached concerning employment or contractual disputes.~~

3. RULE:

Each State agency or institution of higher education shall use a State contract as the commitment voucher in accordance with Fiscal Rule 2-2. Each State agency or institution of higher education is responsible for assuring that all constitutional and statutory requirements have been met prior to signing a State contract.

~~Each state agency or institution of higher education is responsible for assuring that the state contracts they initiate are within the intent of the appropriation and that the state contract is necessary and is the most economical and efficient means for accomplishing the identified tasks.~~

~~Each state agency or institution of higher education is responsible for assuring that all constitutional and statutory requirements have been met prior to signing a state contract.~~

Use of State Contracts

~~A State agency or institution of higher education shall negotiate and process a state contract when:~~

- ~~.01—Acquiring personal services costing over \$100,000 including maintenance and service agreements.~~
- ~~.02—Leasing or entering into a license involving payment by the State for the use of land, buildings, or other office or meeting space when the term is for more than thirty days.~~
- ~~.03—Acquiring architectural services, engineering services, land surveying, industrial hygienist services, and landscape architectural services.~~
- ~~.04—Expending capital construction, controlled maintenance, and/or emergency maintenance project funds in excess of \$100,000 except as otherwise provided in Fiscal Rule 4-1. Purchases of fixed equipment that do not require installation services may be purchased with a state purchase order.~~
- ~~.05—Protecting the interest of the state may only be accomplished by using a state contract because other commitment vouchers are not considered sufficient to adequately protect the state. When questions arise in this area the State Controller's office or the Attorney General's office should be contacted for assistance.~~

State Contract Form and Provisions

- ~~.01—State contract form~~

~~A.——All state contracts, including leases, shall be prepared on standard letter size paper, 8 1/2" X 11".~~

- 3.1 State contract form – All State contracts, including leases, shall be prepared on standard letter size paper, 8 ½ x 11"

3.2 State contract content – All State contracts, except Leases, Settlement Agreements, Sponsored Projects, and Interagency Agreement shall include the following elements:

- a. Identification of the Parties
- b. Funding Obligation Authority
- c. Statutory Authority
- d. Statement of Work
- e. Payment Terms
- f. Performance Period – beginning date and specific termination date or an event from which such date may be determined
- g. General Terms and Conditions
- h. Special Provisions (see appendix to this fiscal rule for Special Provisions)
- i. Signature Page

~~B. All state contracts shall be in a form approved by the State Controller.~~

3.3 Approved State Contract Forms

All State contracts shall be in a form approved by the State Controller. The State Controller has approved the following forms for use as or with State contracts:

3.3.1 Model Contracts – The State Controller has developed model contracts for personal services, information technology contracts and interagency contracts, and may develop other model contracts. See State Controller policy on Use of Model Contracts.

3.3.2 Waived Contracts – This type of form contract may be used where multiple contracts contain the same provisions and only the name of the contractor and amount of the contract changes. After the agency obtains approval from the State Controller for a waived contract, the agency can use the waived contract form without obtaining State Controller approval for each individual contract, as long as none of the provision, other than the name of the contractor and the contract amount are changed.

3.3.3 Contract Modifications – Contract modification tools may be used to modify the terms of an existing contract during the contract term. Each of these modification tools contains specific language for specific situations. See State Controller policy on Contract Modifications. The State Controller has approved the following contract modification forms:

- a. Options
- b. Funding Letters
- c. Change Orders
- d. Task Orders
- e. Contract Amendments

3.3.4

~~All state leases and licenses of real property shall be in a form approved by the State Controller.~~ All state leases and licenses shall contain:

- a. the State Controller's approval clause (Special Provision Number 1),
- b. the Funds availability clause (Special Provision Number 2),
- c. a Collocation clause, The State Controller may agree to modify or waive the collocation clause upon good cause shown. and
- d. Vendor offset (special provision number 7) found in Appendix A to this chapter of the state fiscal rules. The State Controller, with the concurrence of the Executive Director of the Department of Personnel and Administration, may agree to modify or waive the collocation clause upon good cause shown.
- e. All state leases shall contain Clauses specifying cancellation requirements where the premises are destroyed by fire and/or where the premises are subject to eminent domain.

3.3.5 Sponsored Projects Contracts – All sponsored projects contracts shall be in the form of approved by the State Controller. See State Controller policy on Sponsored Projects.

3.3.6 Settlement Agreements – All settlement agreements shall be in a form approved by the Office of the State Controller and the Attorney General's Office.

3.3.7 Any other contract form approved by the State Controller.

3.02 State contract provisions

~~A. All state contracts, except leases and interagency agreements, shall contain the applicable Special Provisions found in Appendix A or Appendix B to this chapter of the state fiscal rules.~~

~~B. All State contracts shall contain a maximum dollar amount to be paid by the state during each fiscal year of the contract. Those state contracts where a maximum contract amount cannot be readily determined, shall contain one of the following provisions:~~

~~—————"Payment pursuant to this Contract shall be made as earned, in whole or in part, from available state funds in an amount not to exceed the amount of funds available for the purchase of _____. The funds that are available may be used to pay multiple contractors for the services that are described in this contract. The liability of the state, at any time, for such payments shall be limited to the unexpended amount remaining of such funds.~~

~~—————Multiple fiscal year contracts shall contain the following provision:~~

~~—————"Payment pursuant to this contract shall be made as earned, in whole or in part, from available state funds in an amount not to exceed the amount of funds available for each fiscal year this contract is in effect for the purchase of _____. The funds that are available for each fiscal year may be used to pay multiple contractors for the services that are described in this contract. The liability of the State, at any time, for such payments shall be limited to the unexpended amount remaining of such funds."~~

~~In addition, state agencies and institutions of higher education using one of these provisions shall also request an encumbrance waiver from the State Controller.~~

~~C. All state contracts involving federal funds shall include the following provision:~~

~~"This Contract is subject to and contingent upon the continuing availability of Federal funds for the purposes hereof."~~

~~D. All state contracts for the lease, easement, right-of-way or disposal of state property located in a flood plain to any non-state, public or private party, shall reference in the conveyance: those uses that are restricted under identified federal, state or local flood plain regulations; those appropriate restrictions to the use of properties by the grantee or purchaser and any successors, except where prohibited by law; or withhold such properties from conveyance.~~

~~E. All state contracts shall contain a specific termination date or an event from which such date may be determined.~~

4. STATE CONTRACT APPROVALS ~~State Contract Approvals~~

The chief executive officer, or a delegate, of a ~~state~~State agency or institution of higher education shall sign all ~~state~~State contracts on behalf of the ~~state~~State agency or institution of higher education.

It shall be the responsibility of the contracting ~~state~~State agency or institution of higher education to obtain all required approvals. Approvals ~~by~~of certain ~~state~~State agencies ~~and institutions of higher education~~ are required by statute, executive order, or fiscal rule depending on the subject matter of the ~~state~~State contract. Proof of all required signatures ~~indicating the approval of state agencies and institutions of higher education~~ shall be retained by the contracting ~~state~~State agency or institution of higher education. ~~State~~State contracts requiring central approvals include:

~~4.1.04~~ Service contracts require the approval of the ~~State~~State Personnel Director or a delegate. -

~~4.02~~ Construction contracts and controlled maintenance contracts require the approval of the ~~State~~State Architect-Buildings Director, or a delegate, unless otherwise exempted by statute or waived by the State Architect.

~~4.03~~ Real property contracts, including leases, easements, and rights of way contracts, require the approval of the Director of the Real Estate ~~Program~~ or a delegate, unless otherwise exempted by statute. Excluded from this requirement are those real properties administered by the ~~State~~State Board of Land Commissioners and the Department of Transportation.

~~4.04~~ Communication system contracts over \$10,000 involving telephone, radio, microwave, ~~te~~ele-type, closed circuit television, automated data processing communications systems require the approval of the ~~State~~State Communications Coordinator, or a delegate.

~~4.05~~ Legal and paralegal service contracts require the approval of the Attorney General's Office.

~~4.06~~ Centralized service contracts require the approval of the Director of the Division of Central Services, or a delegate, for all ~~state~~State agencies within the counties of Adams, Arapahoe, and Jefferson and the city and county of Denver. Examples include ~~state~~State contracts for the acquisition of the following: motor pool operation, motor vehicle maintenance, mail or messenger services, office copying, graphic design for print media, printing and binding, microfilming, or design of management forms.

~~4.07~~ Debt collection service contracts require the approval of the ~~State~~State Controller, or a delegate.

~~4.08~~ ~~State~~State agency or institution of higher education financial systems used to record their financial transactions and financial information and to develop their financial reports and prepare their financial ~~state~~Statements shall be approved by the ~~State~~State Controller, or a delegate.

~~4.9~~ All information technology projects with a purchase price of over \$100,000 require the approval of the Office of Information Technology.

~~All state contracts shall be executed by the State Controller or by an individual delegated to execute state contracts by the State Controller. If an attempt is made to execute a State Contract without the approval of the State Controller, or a delegate, the state contract shall be null and void and not binding against the state. However, every person involved in incurring the obligation shall be jointly and severally liable for the obligation.~~

5. STATE CONTRACT LEGAL REVIEW ~~State Contract Legal Review~~

~~At the discretion of the State Controller or delegate, State contracts shall be reviewed by the Attorney General's Office. This does not include All state contracts shall be reviewed by the Attorney General's office except for interagency contracts and those stateState contracts for which the StateState Controller has designated in writing an attorney, employed by the stateState agency or institution of higher education and authorized by the StateState Attorney General, to perform the required legal review. If the state agency or institution of higher education's legal review raises a question concerning the legality of the state contract, the question shall be referred to the Attorney General's Office.~~

Review by the Attorney General's Office or an attorney delegated by the StateState Controller shall include the following:

- ~~5.104~~ Compliance with the Colorado Constitution, stateState statutes, regulations, and executive orders;
- ~~5.202~~ Authority of the contracting stateState agency or institution of higher education;
- 5.3 The contract contains all essential elements of a legally binding contract;
- 5.4 The contract contains the required signatures; and
- 5.5 The Statement of work or comparable provisions and business or commercial terms are sufficiently clear and definite under the circumstances applicable to the contract to be enforceable.

~~The~~ Attorney General review may also include:

- ~~5.603~~ Risk analysis, including advice regarding significant risks and issues in any particular transaction. The Agency remains responsible for risk assessment and the decision whether to proceed with a contract despite the exposure to risks; appropriate terms and conditions.
- ~~5.7.04~~ Availability of specific remedies;—Conformity between the RFP or IFB and final contract, as appropriate.
- 5.8 Compliance with grant conditions, federal funding requirements, or required assurances.
- ~~5.05~~ Vendor compliance with all preconditions to the contract, as appropriate.

~~If during the course of the legal review a question should arises as to state contract language that cannot be resolved, it shall be referred to the State Controller together with a memorandum detailing the unresolved~~

~~issue for resolution. A copy of the memorandum shall also be sent to the principal contracting state agency or institution of higher education.~~

~~Outsource contracts shall be reviewed by the state Attorney General, or a delegate, but need not be signed and executed by the State Controller, or a delegate, unless the state contract requires an expenditure of state funds or the Attorney General identifies an issue concerning the expenditure or potential expenditure of state funds.~~

6. REVIEW AND APPROVAL BY THE STATE CONTROLLER~~Review and Approval by the State Controller~~

Upon receipt of a stateState contract, the StateState Controller, or a delegate, shall review all the stateState contracts, except revenue contracts, to ascertain:

- Whether or not the proposed expenditure is authorized by the appropriation to which it is proposed to be charged;
- Whether or not the prices or rates are fair and reasonable and in accordance with law or administrative rules;~~or are fair and reasonable and~~

- ~~Whether or not~~ the amount of the expenditure exceeds the unencumbered balance;
- Whether the expenditure is in compliance with all statutes, fiscal rules, and policies.

Upon approval, the ~~state~~State contract shall be executed by affixing the signature of the ~~State~~State Controller, or a delegate.

All State contracts, except for revenue contracts, shall be executed by the State Controller or by an individual delegated to execute State contracts by the State Controller. If an attempt is made to execute a State Contract without the approval of the State Controller, or a delegate, the State contract shall be null and void and not binding against the State. However, every person involved in incurring the obligation shall be jointly and severally liable for the obligation.

See State Controller policy on Review and Approval of State Contracts.

~~Under certain circumstances the State Controller may delegate in writing authority to execute state contracts. Delegation of the State Controller's signature authority does not eliminate the requirement that all state contracts have a legal review or exempt any state agency or institution of higher education from securing the required state contract approvals, as provided in the state contracts approval section of this fiscal rule.~~

~~Delegation granted by the State Controller to state agencies to execute state contracts on his behalf is limited to the specific types of contracts identified in the Letter of Delegation issued to the state agency. All contract types that are not specifically identified as delegated contracts are not delegated contracts and must be executed at the State Controller's Office.~~

7. INTERAGENCY CONTRACTS~~Interagency Contracts~~

Interagency contracts require approval of the ~~State~~State Controller, or a delegate, unless the ~~state~~State agency or institution of higher education disbursing the funds has been delegated ~~State~~State Contract signature authority by the ~~State~~State Controller. Interagency contracts shall, at a minimum, include the following ~~elements~~provisions:

- a. Identificaition of the parties to the State contract;
 - b. Appropriation authority, including fund, State agency or institution of higher education, appropriation code, and encumbrance number;
 - c. Statement of work;
 - d. Statement of consideration (if applicable);
 - e. Payment and other performance;
 - f. Definition of breach and remedies (consistent with Fiscal Rule 2-6); and
 - g. Signature Page
- ~~.01 Identification of parties to the state contract;~~
- ~~.02 Appropriation authority, including fund, state agency or institution of higher education, appropriation code, and encumbrance number;~~
- ~~.03 Scope of work;~~
- ~~.04 Statement of consideration, (if applicable);~~
- ~~.05 Payment and other performance; and~~
- ~~.06 Definition of breach and remedies (shall be consistent with Fiscal Rule 2-6).~~

8. EMPLOYEE/EMPLOYER OR INDEPENDENT CONTRACTOR~~Employee/Employer or Independent Contractor~~

Careful distinction shall be made between work that should be accomplished by persons who are employees of the stateState and work that may be accomplished by individuals or firms on a personal services contract. The responsibilities and obligations of the stateState differ between employee/employer arrangements and agreements with independent contractors. The stateState has a third party liability for the acts of its employees, whereas independent contractors are liable for their own actions. The status should be carefully considered and cases of doubt generally resolved in favor of the employee classification. An erroneous classification as an independent contractor may result in serious penalty to the stateState for failure to deduct applicable taxes. State agencies and institutions of higher education should follow guidelines issued by the Internal Revenue Service and the Colorado Division of Human Resources as well as Colorado statutes and legal opinions in determining whether an individual is an employee or independent contractor.

9. EXCEPTIONS TO RULE:

Excluded from ~~the provision of~~ this fiscal rule are:

~~.01 Contracts that do not provide for the disbursement of funds, with the exception of outsource contracts and contracts that divert revenues due the state.~~

~~.02~~ StateState contracts for personal services exempted from the stateState personnel system by the Colorado Constitution and paid through an authorized stateState payroll system. Examples include appointees by the Governor and Lieutenant Governor and their administrative staffs, members of boards or commissions, faculty members of educational institutions, attorneys at law serving as assistant attorneys general, and employees of the Legislative and Judicial Departments of the stateState. These stateState contracts are considered to be advises of employment and, therefore, are not covered by this fiscal rule.

SPECIAL PROVISIONS

These Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL. CRS 24-30-202 (1).** This contract shall not be ~~deemed~~ valid until it has been approved by the Colorado State Controller or designee.

2. **FUND AVAILABILITY. CRS 24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. **INDEMNIFICATION.** Contractor shall indemnify, save, and hold harmless the State, and its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by cContractor, or its employees, agents, subcontractors, or assignees, pursuant to the terms of this contract.

[Applicable Only to Intergovernmental Contracts] No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, ~~as now or hereafter amended~~.

4. **INDEPENDENT CONTRACTOR. 4 CCR 801-12.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither contractor nor any agent or employee of contractor shall be or shall be deemed to be an agent or employee of the ~~e~~State. Contractor shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the ~~e~~State pursuant to this contract. Contractor acknowledges that contractor and its employees are not entitled to unemployment insurance benefits unless contractor or a third party provides such coverage and that the ~~e~~State does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the ~~e~~State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall provide and keep in force workers' compensation ~~and provide proof of such insurance when requested by the state~~ and unemployment compensation insurance in the amounts required by law, and provide proof thereof when requested by the State, and shall be solely responsible for its acts and those of its employees and agents.

5. **NONCOMPLIANCE WITH LAW ON DISCRIMINATION.** Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations in effect or hereafter established. Contractor agrees to comply with including, without limitation, the letter and the spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.

6. **CHOICE OF LAW.** The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. ~~No Any provision of this contract, included whether or not incorporated herein by reference herein, shall which provides for binding arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent that this contract is capable of execution. At all times during the performance of this contract, Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.~~

7. **[Not Applicable to Intergovernmental Contracts] VENDOR OFFSET. CRS 24-30-202 (1) and 24-30-202.4.** The State Controller may withhold payment of certain debts owed to State agencies under the State's vendor offset intercept system for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or its agencies, as a result of final agency determination or reduced to judgment, as certified by the State Controller.

8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** No State or other public funds payable under this contract shall be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, for the term of this contract and any extensions, cContractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that cContractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. **EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract.

10. **[Not Applicable to Intergovernmental Contracts]. ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES AND RESTRICTIONS ON PUBLIC BENEFITS. CRS 8-17.5-101 and 24-76.5-101.** Contractor certifies that it shall comply with the provisions of CRS 8-17.5-101 et seq. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a

contract with a subcontractor that fails to certify to ~~c~~Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor ~~certifies~~represents, warrants, and agrees that it (i) has confirmed the employment eligibility of all employees who are newly hired for employment in the United States verified that it does not employ any illegal aliens, through participation in the ~~Basic Pilot~~-Employment Eligibility Verification ~~Pilot~~ Program/Basic Pilot administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise shall comply with the requirements of CRS 8-17.5-102(2)(b). Contractor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. Failure to comply with any requirement of this provision or CRS 8-17.5-101 et seq., ~~may shall~~ be cause for termination for breach and, if so terminated, ~~c~~Contractor shall be liable for ~~actual and consequential~~ damages.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears or affirms under penalty of perjury that he or she (i) is a citizen of or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of CRS 24-76.5-101 et seq., and (iii) ~~has~~shall produced one (1) form of identification required by CRS 24-76.5-103 prior to the effective date of this contract.

Revised June 13, 2007~~October 25, 2006~~